UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 9 2008

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Inadvertent Errors in the Final Amendments to the New Source Performance Standards for Petroleum Refineries (NSPS Subpart J) and the Newly Promulgated New Source Performance Standards for Petroleum Refineries (NSPS Subpart Ja)

FROM: Robert J. Meyers
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Office of Policy, Economics and Innovation

TO: The Administrator

Inadvertent errors were made in the process of preparing the final rulemaking signature package for the new source performance standards (NSPS) for petroleum refineries that was signed on April 30, 2008. One set of errors involves the applicability date for Subpart Ja for provisions that were newly included in the final rule. Another set of errors involves the need to sequence compliance activities to avoid safety hazards. We also noted an incorrect cross-reference, two typographical errors, and several inconsistencies in references to one standard incorporated by reference. Printing of the final rule is currently on hold pending approval of our Incorporation by Reference (IBR) request by the Office of the Federal Register. We recommend making the changes discussed below while awaiting approval of the IBR request.

In the final rulemaking package, we split out flares as a new subcategory of fuel gas combustion devices and applied additional flare gas minimization requirements to flares that were modified, constructed or reconstructed after the proposal date. While we required a flare gas minimization plan and elimination of routine flaring in the proposal, these were requirements that applied to modified, constructed and reconstructed fuel gas producing units, not flares. In addition to changing the affected source, we added new requirements for flare gas minimization

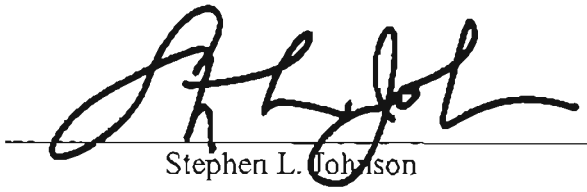
that were not proposed, including monitoring flow and sulfur content, limiting flare gas flow by recovering gas as fuel, and the development of a flare management plan that includes minimizing flaring during startup and shutdowns and performing root cause analysis for high flare gas flow or sulfur dioxide (SO_2) emissions. Finally, the final rule also includes, without having proposed to do so, a new provision defining what constitutes a modification of a flare.

In reviewing the final rule, we have concluded that as written, the rule inadvertently applies to certain flares that were constructed, reconstructed or modified between proposal and final but which are not "new sources" within the meaning of section 111 of the Clean Air Act. Specifically, in changing the affected source and modification definition in the final rulemaking package, some flares that would not have been affected sources under the proposed requirements are now covered by the final rule. We recommend addressing this inadvertent error so that only flares commencing construction, reconstruction or modification after the promulgation date would be subject to the new NSPS subpart Ja requirements. To avoid creating a gap in coverage, we also recommend conforming NSPS subpart J so that flares that were new, modified, or reconstructed between the proposal and final date would be subject to fuel gas combustion unit standards in subpart J rather than be subject to no requirements at all.

In addition, we identified an inadvertent error in the flare minimization requirements. Refiners may find it necessary for safety reasons to vent additional streams of combustible gases into an existing flare system. Under the final NSPS subpart Ja requirements, this would make the existing flare system modified and immediately subject to the flare requirements upon startup. For the hydrogen sulfide (H_2S) limitations this is not a problem, however, it creates problems for the flare gas minimization requirements. Modifications must be done quickly and this would not allow time to install the required monitors, to reduce the flow to the flare, or to develop and implement the flare management plan. Delaying the modification to allow time to comply with the new flare gas minimization requirements could result in unsafe operating conditions. Moreover, requiring all of the flare gas minimization activities immediately is expected not to be cost effective and therefore would not qualify as Best Demonstrated Technology, the statutory test for new source performance standards. Therefore, we also recommend sequencing compliance for modified flares. These affected flares must comply with the final H_2S limitations immediately upon startup and with all other flare gas minimization requirements identified above within 1 year of startup. New and reconstructed flares, on the other hand, should be designed and built to meet all of the requirements immediately upon startup so all of the requirements for flares would be effective upon start-up of the new flare.

The attached redlined pages of the preamble and rule identify these errors and show the corrected text. The preamble changes appear on pages 13, 22, 26-29, 85-87, and 89-90; the rule changes are shown on pages 135, 148, 162-164, and 211-212. While developing these changes, we also corrected typographical errors on pages 12 and 189, an incorrect cross reference on page 201, and inconsistencies in references to one of the standards incorporated by reference on pages 129, 142, and 207.

We recommend that you correct these inadvertent errors and approve these changes by signing and dating below.



Stephen L. Johnson

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Date